IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1667 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
JAGDISHBHAI JOITARAM PATEL

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Appearance :
MR SS PATEL for Appellant
MR KV GADHIA for Opponent
MR ADIL MEHTA for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 12/10/2006

ORAL JUDGMENT

1 Heard learned APP Mr. S.S. Patel for the appellant – State and learned Advocate Mr. K.V. Gadhia with Mr. Adil Mehta for

respondent – accused.

2 On 18th December, 2005, at about 7.30 a.m. one labourer working in the factory of the respondent, named as Renukaben Dhanjibhai Parghi, met with a fatal accident while she had been working in the factory of the respondent and, hence, Factory Inspector Mr. A.K. Jani visited the said factory on 19th of December, 2005 and 13th of January, 2006. On an inquiry, it was found that machineries installed in the factory was not properly secured by fencing as per the provisions of the Factories Act, and in the result, shawl of the deceased Renukaben came in abrupt contact of Pulley, which ultimately pressed the neck of the deceased, resulting into her death. On completion of investigation, a case was filed against the present respondent.

3 The respondent accused pleaded guilty to the charge and learned Magistrate was pleased to convict the respondent for the charge and sentenced him to undergo imprisonment till rising of the Court and to pay fine of Rs. 5,000/- in default to undergo simple imprisonment of 100 days and, hence, this Appeal by the State for enhancement of the sentence.

4 Upon request of learned Advocates for the parties, the matter was taken up for final hearing today. Though it has been vehemently submitted by learned APP on behalf of the appellant that maximum possible punishment including imprisonment be

imposed upon the respondent as a miserable death has been caused on account of negligence on the part of respondent - original accused, which was also a breach of the provisions of the Factories Act. It was submitted that under Section 92 of the Factories Act, 1948, the respondent may be punished for the imprisonment which may be extended two years and fine which may extent upto Rs. 1 lakh when the death is caused. It is submitted that an exemplary sentence is required to be imposed while the learned Magistrate not only awarded minimum lesser punishment for the imprisonment, but erred in imposing fine which is lesser than the amount of fine minimum prescribed by Section 92 of the Act. It is, therefore, submitted that the Appeal be allowed and the sentence imposed upon the respondent be enhanced to greater extent.

5 As against that, learned Advocate Mr. Adil Mehta for the respondent stated that, true that, this unfortunate mishap occurred in the factory of the respondent, but as per his statement, now to secure the said machineries, fencing has been made to ensure the safety of the workers in the factory. It is submitted that this is the first offence of the respondent without any antecedents. It is submitted that the respondent accused has pleaded guilty before the Trial Court and, hence, the above said punishment is imposed upon the respondent. It is further submitted that the respondent has paid the amount of Rs.45,000/- to the family of the deceased

immediately. It is submitted that under the Group Insurance Scheme, the family members of the deceased are likely to get an amount of Rs. 2, 35,000/-. It is submitted that in this view of matter, the minimum punishment, which is prescribed under the law, be imposed upon the respondent.

6 Having heard learned counsels for the parties, it clearly appears that the unfortunate incident has occurred in which a worker of the factory has lost her life for not ensuring proper safety measures by the owners and managers of the factory. It is also true that, in such incident, a strict view is required to be taken, and in this case learned Magistrate has taken the view contrary to the statutory provisions, wherein the amount of fine as prescribed is not less than Rs. 25,000/- while the learned Magistrate imposed the fine of Rs. 5,000/- only. However, having regard to the submissions made on behalf of the respondent that some immediate relief was given in cash to the family of the deceased, and that the family of the deceased is likely to get some amount of group insurance and further the respondent now undertakes to ensure the safety measures for the workers, while enhancing the sentence imposed upon the respondent, these factors may also be looked into.

7 In this view of matter, the ends of justice would be met if maintaining the sentence for the imprisonment till rising of the

Court, the amount of fine imposed upon the respondent be increased particularly in view that the statute has provided amount of Rs. 25,000/- to be the minimum amount of fine. Therefore, it is required that the amount of fine which is imposed of Rs. 5,000/- upon the respondent be enhanced to Rs. 35,000/-.

8 In the result, this Appeal is partly allowed and while maintaining the sentence of imprisonment as imposed by learned Magistrate upon the respondent, the amount of fine imposed upon the respondent is enhanced to Rs. 35,000/- from Rs. 5,000/-. The respondent has already paid the amount of Rs. 5,000/- before the Trial Court. The amount of Rs. 30,000/- of fine shall be deposited by the respondent within four weeks from today in the Trial Court, in default to pay the amount of fine, the respondent shall undergo simple imprisonment of three months.

(J. R. VORA, J.)

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